

Memorandum 79-2

Subject: Study D-900 - Wage Garnishment Procedure

The Commission distributed for review and comment a tentative recommendation (copy attached) that would change existing law to remove the levying officer from the wage garnishment procedure. The tentative recommendation would permit the judgment creditor to serve the wage garnishment order on the employer by regular mail and would require the employer to pay the amount withheld directly to the judgment creditor.

The recommendation is opposed by:

- (1) The County Clerks Association (Exhibit 1).
- (2) California State Sheriffs' Association (Exhibit 2) (see also Exhibit 3).
- (3) California Association of Collectors (oral communication from legislative representative).

The recommendation was supported by:

- (1) United States Attorney--Central District of California--Claims & Judgments Section (Exhibit 4).
- (2) William M. Wright (Exhibit 5).
- (3) Conrad D. Breece (Exhibit 6).

Concern about various aspects of the tentative recommendation was expressed by four commentators who suggested that revisions be made to deal with particular problems:

- (1) Legal Aid Society of San Mateo (Exhibit 7).
- (2) Legal Aid Foundation of Los Angeles (Exhibit 8).
- (3) Justice Robert Kingsley (Exhibit 9).
- (4) Franchise Tax Board (Exhibit 10).

We have not attempted to summarize the attached letters, because we do not believe that there is any reasonable chance the tentative recommendation would be approved by the Legislature. This recommendation would have a reasonable chance of enactment only if it were generally supported by both debtors and creditors. The California Association of Collectors is opposed and there is no great enthusiasm for the recommendation on the part of debtors. Accordingly, the staff recommends that the Commission not submit this recommendation to the Legislature. We suggest, however, that you read the various letters attached to determine whether you agree with the staff or whether you believe this tentative recommendation should be given further consideration by the Commission at a future meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



COUNTY CLERKS ASSOCIATION

of the State of California, Incorporated

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January 16, 1979

Mr. John H. De Mouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, Ca. 94305

Dear Mr. De Mouilly:

I am writing to express the concern of the County Clerks' Association over the Law Revision Commission's tentative proposals relating to wage garnishment procedures.

Basically, we feel that over the years sheriffs and constables have developed staffs, procedures and controls to administer earnings withholding orders efficiently and judiciously, and we believe that the interests of debtors, creditors and employers would best be served by continuing the involvement of levying officers in the process.

If a change is to be made, however, we strenuously object to transferring some of the levying officers' functions to clerks of the various courts without providing for either: 1. a corresponding transfer of personnel to perform the work; or 2. a source of revenue which would permit clerks to add sufficient staff to deal with the increased workload.

It is recognized that municipal court clerks would inherit the greater portion of the transferred functions and would be impacted more than county clerks. Nevertheless, in the wake of Proposition 13, we feel that any act which imposes additional duties on any agency of local government must also provide for the resources

Mr. John H. De Mouilly
Page Two

with which to carry out those duties. Many clerks are operating with reduced staffs now, and have had to shorten the hours their offices are open to the public. Any increase in the workload without a corresponding increase in staff would only exacerbate an already bad situation, leading to a further deterioration of services to all persons who use the courts.

I urge the Commission to give careful consideration to these points before making a final decision on the tentative recommendation.

Very truly yours,



GEORGE A. MANN
President

/es

cc: Robert L. Hamm
James A. Simpson
Carl M. Olson



California State Sheriffs' Association



Organization Founded by the Sheriffs in 1894

January 8, 1979

President

DUANE H. LOWE
Sacramento County
P. O. Box 988
Sacramento, CA 95805
916-440-5092

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Attention: Mr. John H. DeMouilly, Executive Secretary

1st Vice President

BOB WILEY
Tulare County
County Civic Center
Visalia, CA 93278
209-733-6241

Dear Sir

The California State Sheriffs' Association Civil Procedure Committee has reviewed carefully your proposed Tentative Recommendation relating to Improvements in Employees Earnings Protection Law. We concur with your recommendation as to the service by First-Class Mail but do not agree with your proposal to delete the responsibility of the levying officer.

2nd Vice President

AL LOUSTALOT
Kern County
P. O. Box 2208
Bakersfield, CA 93301
805-227-3392

As was aptly stated in the introduction, the levying officer does act as a middleman between the creditor and debtor, protecting the rights and interest of both. Having no personal interest in the action and being a well informed layman, he is in a position to regulate the proceedings and prevent abuse of judicial process.

Sergeant-At-Arms

RICHARD F. PACILEO
El Dorado County
300 Fair Lane Drive
Placerville, CA 95667
916-626-2211

Since an Earnings Withholding Order may be issued against multiple debtors in an action and a writ of execution issued against other property, the possibility exists certainly that the collections may far exceed the judgment. As only the creditor is responsible for insuring that the collections are correct, the debtor is at his mercy. It could be necessary for the debtor to rely on expensive litigation in already overcrowded courts, for recovery of those excess amounts collected. Under the present system the levying officer acts as "Trustee" of monies received, accounting to the parties and to the court. It is doubtful that this expertise would be available in the handling by pro-per creditors. It would appear that the fee paid to the levying officer is a small price to pay for the service received.

Secretary

LYNN S. WOOD
Stanislaus County
P. O. Box 858
Modesto, CA 95353
209-526-6456

Treasurer

BRAD L. GATES
Orange County
P. O. Box 4151
Santa Ana, CA 92702
714-834-3012

This recommendation would make the exemption law more complicated and more difficult for the debtor by creating different procedures and offices to be dealt with depending on the method of levy. For example, a claim of exemption on earnings in the hands of the employer or creditor would be filed with the court, while a similar claim under the same section on earnings deposited in a bank must be filed with the levying officer. Many debtors are denied the

protection to which they are legally entitled by lack of knowledge. Increasing the knowledge required would certainly not be to their benefit.

Though this recommendation would appear to benefit professional creditors, it is certainly questionable as to the benefits provided to the private citizen who infrequently has cause to become involved with debt collection practices. Where in the past he could turn to the levying officer for assistance, he will now be forced to acquire a knowledge of civil procedures or employ an attorney or professional collector to assist him. The cost to the creditor and debtor certainly would far exceed the levying officer's fee for serving the garnishment, even if this fee were increased to recover actual costs.

Your statement that the savings to the taxpaying public in eliminating the levying officer will be offset in part by the necessity for establishing staff positions within the office of the court clerks to handle exemption claims. It would appear that your effort would only remove a function from one county office to another without actually accomplishing any great saving for the citizens of the community.

Historically the responsibility of enforcing a judgment was placed with the Sheriff for the protection of the citizenry. It is questionable that this protection is no longer required and that the time is now proper for the legislature to permit the general public to take the law into their own hands. This sets a precedence which may lead to further encroachments and "self help" law enforcement which could cause serious problems.

The California State Sheriffs' Association respectfully requests your reconsideration of your tentative recommendation as we truthfully believe, both the creditor and debtor benefit from the efforts of levying officers in their handling of collections and accountability of same.

Sincerely



Duane Lowe, President
California State Sheriffs' Association

ar

California

Robert E. Winter, Sheriff

January 15, 1979

John H. DeMouly, Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

RE: PROPOSED IMPROVEMENTS IN EMPLOYEES EARNINGS PROTECTION LAW

Dear Mr. DeMouly:

Although I strongly and actively support the public mandated "economy in government" principle of Proposition 13, and recognize the Commission's continuing efforts toward that end, as an elected sheriff, charged with the economic service of the public need, I feel the proposed improvements will create a false economy and do the public I serve a grave disservice.

The removal of levying officers from the procedural scheme of levies against debtors' earnings effectively takes away the assistance and protection historically provided by them to creditors, debtors, garnishees, and third party claimants, including those with both extensive and very limited knowledge, and sometimes apparent ineptness, carelessness, or dishonesty. My civil people confirm a significant amount of time on earnings garnishments is spent providing these public services and their nature and frequency verify a real need for continuation. The already overburdened courts will pick up some of the loss, probably with as or more highly paid help, but many major areas of concern will remain unassisted and unprotected unless they too become the courts' responsibility as seems likely. The original, recent revisions to reduce levying officers' burdens by allowing registered or certified mail services and limitations on withholdings to cut exemption claims, and future legislation to improve cost recovery through fee increases, with retention of the levying officers' assistance and protection, are more desirable.

Retention of levying officers to perform these very necessary services, with economy efforts directed toward more cost effectiveness within that concept, seems to me to be a far more viable approach to implementation of Proposition 13, and I encourage your action in that direction.

Very truly yours,



ROBERT E. WINTER
SHERIFF

MHL/mk

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

Memo 79-2

EXHIBIT 4

United States Department of Justice

UNITED STATES ATTORNEY

CENTRAL DISTRICT OF CALIFORNIA

U. S. COURT HOUSE

312 No. SPRING STREET

LOS ANGELES, CALIFORNIA 90012

HWB:am

Claims & Judgments Section

Tel: (213) 688-2470

December 13, 1978

John H. DeMouly, Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. DeMouly:

Pursuant to your Letter of Transmittal dated November 30, 1978, pertaining to "Tentative Recommendation relating to Improvements in Employees' Earnings Protection Law," I strongly support the tentative recommendation for the reasons given in your Tentative Recommendation.

Service by mail and elimination of the levying officers will be of benefit to the creditor, debtor and levying officers. We have experienced considerable difficulty in obtaining prompt and accurate payment from our levying officers and am sure that their being relieved of this duty would be welcomed by them and us.

Very truly yours,



HUGH W. BLANCHARD

Assistant United States Attorney



CLIFFORD S. ADAMS
 ROBERT M. ADAMS, JR.
 CONRAD D. BREECE
 WILLIAM M. BRINTON
 AYLETT B. COTTON
 ALLEN HOWARD COX
 DUANE W. DRESSER
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COTTON, SELIGMAN & RAY

ATTORNEYS AT LAW

ALCOA BUILDING, SUITE 1400

ONE MARITIME PLAZA

SAN FRANCISCO, CALIFORNIA 94111

PHILIP A. RAY (1911-1970)

LAWRENCE DRAPER, JR.
OF COUNSEL

TELEPHONE
[415] 397-4600

December 8, 1978

California Law Revision Commission
 Stanford Law School
 Stanford, California 94305

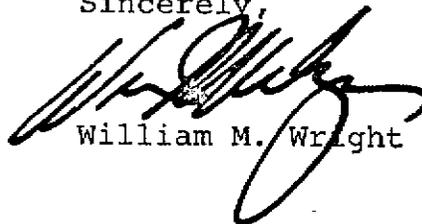
Re: Tentative Recommendation Relating
 to Improvement in Employees' Earnings
 Protection Law (November 1978)

Gentlemen:

I have examined the above-described tentative recommendation which recommends two improvements in California's Employees Earnings Protection Law, namely: (1) service by first-class mail of earnings withholding orders, and (2) elimination of duties of levying officer. I support both these recommendations, which I believe will expedite the levying procedure and will eliminate cost to the temporary benefit of the judgment creditor and to the ultimate benefit of the judgment debtor. The involvement of sheriffs and marshals in the wage garnishment is unnecessary and time-consuming for them and the elimination of this involvement should result in significant savings to the taxpayers.

In short, I believe your recommendations benefit all parties involved in the wage levying procedure and the public at large. You are to be congratulated on this type of constructive recommendation.

Sincerely,



William M. Wright

WMW/sw

CLIFFORD S. ADAMS
 ROBERT M. ADAMS, JR.
 CONRAD D. BREECE
 WILLIAM M. BRINTON
 AYLETT B. COTTON
 ALLEN HOWARD COX
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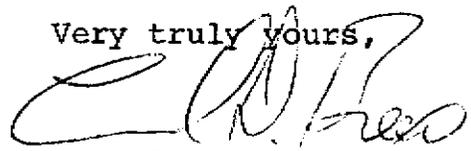
December 13, 1978

California Law Revision Commission
 Stanford Law School
 Stanford, California 94305

Re: Tentative Recommendation Relating to
 Improvements in Employees' Earnings
 Protection Law, November 1978

Gentlemen:

I have studied the tentative recommendation of the Commission regarding improvements in the employees' earnings protection law. I have substantial experience in the creditors' remedies field and concur strongly with the Commission that the proposed changes are long overdue and will result in savings to both creditors and debtors.

Very truly yours,

 Conrad D. Breece

CDB:d1c

LEGAL AID SOCIETY OF SAN MATEO COUNTY

PETER H. REID
EXECUTIVE DIRECTOR

2221 BROADWAY
REDWOOD CITY, CALIFORNIA 94063
TELEPHONE (415) 365-8411

December 11, 1978

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Re: Tentative Recommendation
relating to Improvements
In Employees Earnings
Protection Law (Nov. 1978)

Dear Sir or Madam:

In reviewing the proposed changes in the 1978 statute I noted certain areas of potential confusion and conflict. However, I do support the service by first class mail of earnings withholding orders, and the elimination of duties of levying officers.

In reviewing the statutory scheme by which the employer delivers the withheld funds to the judgment creditor (§ 723.025; 723.104 & 723.125), I could not determine if the employer must hold the funds until after the time in which the debtor may file a claim of exemption. It is also unclear whether the employer holds the garnished sum during the pendency of a claim of exemption.

I urge that these statutes be amended to provide that the employer does not release any sums to the judgment creditor until 15 days after the date of levy. Additionally, the statutes should specify that once served with notice of a claim of exemption by the clerk of the court, the employer retains all garnished funds until he or she is advised of the court's ruling on the claim of exemption.

In the event the judgment creditor is indigent he or she will probably spend those funds realized through a garnishment soon after receiving said funds from the employer. If a claim of exemption is subsequently granted, the indigent debtor will, as a practical matter, be unable to gain return of the previously garnished funds from the judgment creditor.

I see no logical basis to eliminate the requirement of a receipt from the judgment creditor to the debtor when the garnished funds are pursuant to a withholding order for support (§ 723.026). I think it would be advisable to delete the last sentence in § 723.026. All judgment debtors should be provided by a record of payments. As we all know, many disputes arise within the context of support hearings as

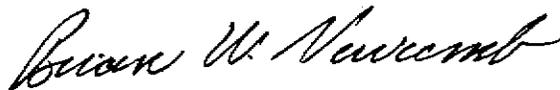
to exactly what sums have been paid or received by the parties.

In order to reduce the possibility of a judgment creditor receiving funds in excess of the judgment amount, I suggest that § 723.027 be amended to state the judgment creditor shall serve an acknowledgment of the satisfaction of judgment upon the employer within five (5) days after the judgment is satisfied. There is an inherent ambiguity in the word "promptly" which could create unnecessary friction between the debtor, the employer and the creditor.

I also propose that § 723.079 be amended to require the delivery of a receipt to the taxpayer for amounts paid over to the state pursuant to a withholding order. I was at a loss in reviewing the statute to discover any reason why the state should be given a dispensation in giving a receipt for monies it receives. It seems totally inappropriate to require the debtor to make a written request for a receipt. The debtor in all likelihood would expect a receipt.

Thank you for the opportunity comment on this tentative recommendation.

Yours very truly,



BRIAN W. NEWCOMB
Attorney at Law

BWN:bc

LEGAL AID FOUNDATION OF LOS ANGELES

2301 SOUTH HILL STREET • LOS ANGELES, CALIFORNIA 90007 • (213) 748-0431

January 15, 1979

IN REPLY PLEASE REFER TO:

California Law Revision
Commission
Stanford Law School
Stanford, California 94305

Gentlemen:

I have reviewed your recommendations in regards to "Improvements In Employees' Earnings Protection Law". I have some serious concerns, especially because of your recommendation that the marshall be eliminated as the levying officer in wage garnishment proceedings. Your intent is to have the parties be responsible for all acts presently performed by the levying officer.

My concerns relate to the situation where a claim of exemption is filed. Presently, if the judgment debtor wins his claim, any monies withheld by the levying officer are returned to the debtor. Under the proposed rule, these monies would be in the hands of the creditor. It is my feeling that many creditors will not return any money that they have received in this situation. The debtor will not have a practical remedy to get these monies back. Even a lawsuit against the creditor would be of little help, as the creditor could simply offset any liability he has against the judgment he already holds.

I base my concern on a situation that already exists. Following the enforcement of a writ of execution for possession in an eviction action, the marshall locks up the premises and turns possession over to the landlord. Any personal property still on the premises is to be turned over to the ex-tenant upon tender of reasonable storage fees. Invariably, landlords refuse to comply, insisting that they be paid any past due rent before they will give up the property they hold. There is no practical solution for the ex-tenant in that situation, and there will be no practical way for someone who wins a claim of exemption to get their money back either.

Another problem will be that the clerk will not accept a claim of exemption without a filing fee if it is the first paper filed by the judgment debtor in a case. This will be a financial hardship to someone who is already in financial difficulty, especially in this era of constantly rising filing fees. Presently this problem doesn't exist because the claim of exemption is filed with the marshall and not the clerk.

California Law Revision
Commission
Stanford Law School
January 15, 1979
Page Two

I hope that you will consider these problems in your deliberations, and that you modify your proposals to alleviate these potential problems. I would be more than happy to give you examples of fact situations which would illustrate my concerns.

Yours truly,

A handwritten signature in cursive script that reads "Ron Sievers". The signature is written in dark ink and is positioned above the typed name and title.

RON SIEVERS
Directing Attorney

R
S
:
s
f
b

cc: T. Rothchild &
C. Reisman

EXHIBIT 9
STATE OF CALIFORNIA
COURT OF APPEAL
SECOND DISTRICT--DIVISION FOUR
3580 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010

January 23, 1979

ROBERT KINGSLEY
ASSOCIATE JUSTICE

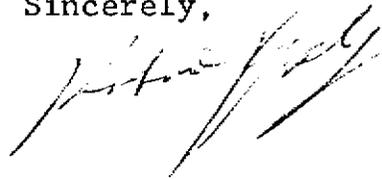
California Law Revision Commission,
Stanford Law School,
Stanford, California 94305

Gentlemen:

I have reviewed the Tentative Recommendation relating to Improvements in Employees' Earnings Protection Law. I have two comments:

- (1) I am troubled by the substitution of first class mail for certified mail. There was a time when first class mail got delivered accurately and promptly, but those days (alas) are gone. Certified mail is inexpensive and little trouble for anyone; I would retain it.
- (2) Although the proposed law requires the creditor to send the employee a receipt, the law does not, so far as I can see, require the employer to tell the employee about anything other than the original order. The employee, for subsequent payments, gets a check for less than he has earned but no explanation of the deductions! It would harm the employer little to include the payments under the order, along with the withholding tax data (now required), when he sends the check.

Sincerely,





STATE OF CALIFORNIA

FRANCHISE TAX BOARD

SACRAMENTO, CALIFORNIA 95867

(916) 355-0728

In reply refer to:
410:PSP:sw

January 11, 1979

John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. DeMouilly:

This department has reviewed the Commission's tentative recommendations relating to Improvements in Employees' Earnings Protection Law and has the following comments.

Section 5 of the proposal, adding Section 723.026 to the Code of Civil Procedure, would require the judgment creditor to issue to the judgment debtor a monthly receipt and accounting of payments received from employers pursuant to a civil earnings withholding order.

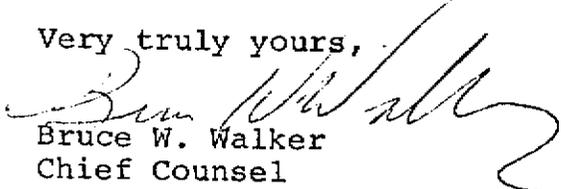
Section 11 of the proposal, adding Section 723.079 to the Code of Civil Procedure, exempts the state from the above requirement, unless the taxpayer requests in writing that receipts be sent.

This department's current practice is to voluntarily provide an accounting of debits and credits, applied to a liability, upon request of the taxpayer. Because the bulk of this department's collection effort is machine billed and processed, the source of payments received, i.e., be it employer, bank, taxpayer, etc., is never identified. Requiring a separate receipting for and cumulation of employer payments only could create an onerous administrative burden without any justifiable purpose being accomplished. There has been no showing that, with respect to withholding orders for taxes, amounts are not properly credited to the taxpayer's account.

Under the circumstances, we recommend deletion of proposed CCP Section 723.079 and amendment of proposed CCP Section 723.026 to provide a similar exemption for an earnings withholding order for taxes, as is proposed for a withholding order for support.

The other changes proposed by the Commission do not appear to have any significant effect on this department's efforts.

Very truly yours,



Bruce W. Walker
Chief Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

IMPROVEMENTS IN EMPLOYEES' EARNINGS PROTECTION LAW

November 1978

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN JANUARY 29, 1979.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

November 1978

TENTATIVE RECOMMENDATION

relating to

IMPROVEMENTS IN EMPLOYEES' EARNINGS PROTECTION LAW

The Employees' Earnings Protection Law,¹ governing wage garnishment procedure, was enacted in 1978² upon recommendation of the California Law Revision Commission.³ The Commission has continued its study of wage garnishment procedure and recommends two improvements in the 1978 statute: (1) service by first-class mail of earnings withholding orders, and (2) elimination of duties of levying officer.

Service by First-Class Mail

The Employees' Earnings Protection Law authorizes delivery of many orders, notices, and documents by first-class mail⁴ but limits service of an earnings withholding order to personal delivery or registered or certified mail, return receipt requested.⁵

Experience indicates that a person to whom first-class mail is sent is more likely to receive the mail, and to receive it more quickly, than if it is sent by registered or certified mail. First-class mail service has long been used by the state in enforcing tax liabilities by wage garnishment, and the Employees' Earnings Protection Law specifically authorizes service of all orders, notices, and documents by the state by first-class mail.⁶ First-class mail is also less expensive than other forms of service.

1. Code Civ. Proc. §§ 723.010-723.154.
2. 1978 Cal. Stats., Ch. 1133, § 7.
3. Recommendation Relating to Wage Garnishment, 13 Cal. L. Revision Comm'n Reports 1703 (1976).
4. E.g., Code Civ. Proc. §§ 723.104(b) (employer's return), 723.105(d) (judgment creditor's notice of opposition).
5. Code Civ. Proc. § 723.101.
6. Code Civ. Proc. § 723.080.

For these reasons, the Commission recommends that first-class mail be authorized for all orders, notices, and documents, including an earnings withholding order. Nothing in the recommended legislation would preclude a person from using a more costly form of service at that person's own expense. But, to encourage fullest use of first-class mail, the Commission further recommends that the costs of service under the Employees' Earnings Protection Law not be a recoverable cost. Use of first-class mail will result in a substantial saving to the judgment creditor initially and to the judgment debtor ultimately. The law provides adequate remedies--such as citation for contempt and liability for abuse of process--to protect against any possible abuse of the first-class mail procedure.

Duties of Levying Officer

Under the Employees' Earnings Protection Law, the levying officer acts as a middleman between court, judgment creditor, judgment debtor, and employer. The levying officer serves the earnings withholding order on the employer,⁷ receives the withheld earnings from the employer and transmits them to the judgment creditor,⁸ receives exemption papers from judgment debtor and judgment creditor and transmits them to the court,⁹ and transmits court orders to the employer.¹⁰ Some of these acts involve a substantial commitment of resources by the levying officer, such as the duty to account for all amounts received.¹¹ The fee for performing these acts is limited by law.¹²

The acts for which the levying officer is responsible could as well be performed by the parties themselves, without use of a middleman.

7. Code Civ. Proc. § 723.103.

8. Code Civ. Proc. § 723.026.

9. Code Civ. Proc. § 723.105.

10. Code Civ. Proc. § 723.105.

11. Code Civ. Proc. § 723.026.

12. Govt. Code § 26750 (the fee is \$8.50; no additional fees may be charged).

The judgment creditor can serve the earnings withholding order directly on the employer, the employer can send the withheld earnings directly to the judgment creditor, the judgment debtor and judgment creditor can transmit their exemption papers directly to the court, and the court can transmit orders directly to the employer. There is no need for an intermediary in the wage garnishment process. The use of the levying officer causes delay, for example, in the receipt of money by the judgment creditor and in receipt by the employer of a notice to terminate withholding from the judgment debtor's earnings. The fee charged by the levying officer, while inadequate for the services performed by the levying officer, represents an added burden that is ultimately on the judgment debtor. And the fact that the levying officer's fee is inadequate increases the likelihood that the fee will be raised, thereby imposing an even greater burden on the judgment debtor.

This is an area where a nonessential service and cost of the levying officer can and should be eliminated. The taxpaying public is required to support this function of the levying officer unnecessarily. In view of Proposition 13 and the need to reduce spending by local government, the Commission recommends the removal of the duties of the levying officer under the Employees' Earnings Protection Law.

The Commission's recommendations would be effectuated by enactment of the following measure.

14/906

An act to amend Sections 683, 723.022, 723.025, 723.027, 723.030, 723.031, 723.073, 723.077, 723.080, 723.101, 723.102, 723.103, 723.104, 723.105, 723.121, 723.122, 723.125, 723.126, 723.127, 723.129, and 723.152 of, to repeal and add Section 723.026 to, and to add Sections 723.079 and 723.155 to, the Code of Civil Procedure, to repeal Section 26750 of the Government Code, and to amend Section 12 of Chapter 1133 of the Statutes of 1978, relating to the Employees' Earnings Protection Law.

The people of the State of California do enact as follows:

SECTION 1. Section 683 of the Code of Civil Procedure is amended to read:

683. (a) The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

(b) If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

(c) If property either personal or real be levied upon under such writ of execution but the sale thereunder be postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver such execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

(d) If proceeds resulting from a levy of execution are received by the levying officer after the writ has been returned to the court in which the judgment is entered, upon request of the person in whose favor the writ runs, the clerk shall redeliver such execution to the officer to whom it was directed in order to permit the officer to make an alias return of the levy as in the case of an original return of execution.

(e) Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by subdivision (d) or (g) of Section 690.31 has been served shall be indicated on the writ, or separately and attached to the writ.

~~(f) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 2-5 (commencing with Section 723-010) prior to the time the writ of execution is made returnable under subdivision (a); the execution is returnable as provided in Section 723-026.~~

Comment. Section 683 is amended to delete the reference to the rules governing the return of a writ of execution when an earnings withholding order has been served. A writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

14/913

SEC. 2. Section 723.022 of the Code of Civil Procedure is amended to read:

723.022. (a) As used in this section, "withholding period" means the period which commences on the 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

(1) The 100th day after the order was served.

(2) The date the employer has withheld the full amount specified in the order.

(3) The date of termination specified in a court order served on the employer.

(4) The date of termination specified in a notice of termination served on the employer by the ~~levying officer~~.

(5) The date of satisfaction of the judgment pursuant to which the earnings withholding order is issued specified in a copy of the satisfaction of judgment served on the employer.

(b) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any period of such employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the ~~levying officer~~ judgment creditor pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) ~~or~~ (4) ~~,~~ or (5) of subdivision (a).

Comment. Section 723.022 is amended to delete the references to the ~~levying officer~~. The court order of termination referred to in subdivision (3) and the notice of termination referred to in subdivision (4) are served by the court clerk. Section 723.105. The satisfaction of judgment referred to in subdivision (5) may be served by either the judgment creditor or the judgment debtor. Section 723.027. The employer pays amounts over to the judgment creditor. Section 723.025.

18/530

SEC. 3. Section 723.025 of the Code of Civil Procedure is amended to read:

(a) Except as provided in subdivision (b), the amount required to be withheld pursuant to an earnings withholding order shall be paid monthly to the ~~levying officer~~ judgment creditor not later than the 15th day of each month. The initial monthly payment shall include all amounts

required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

(b) The employer may elect to pay the amounts withheld to the levying officer judgment creditor more frequently than monthly. If the employer so elects, payment of the amount withheld from the employee's earnings for each pay period shall be made not later than 10 days after the close of the pay period.

Comment. Section 723.025 is amended to delete the references to the levying officer. Payments are made to the judgment creditor. Section 723.125.

31/786

SEC. 4. Section 723.026 of the Code of Civil Procedure is repealed.

~~723.026. (a) The levying officer shall receive and account for all amounts received pursuant to Section 723.025 and shall pay amounts so received over to the person entitled thereto at least once every 30 days.~~

~~(b) Where an earnings withholding order has been served prior to the time the writ of execution is made returnable under subdivision (a) of Section 683, the levying officer may, in the levying officer's discretion, return the writ of execution at either of the following times:~~

~~(1) The writ of execution may be returned after the earnings withholding order terminates and the amount withheld by the employer has been paid over to the levying officer.~~

~~(2) The writ of execution may be returned at a time earlier than the time specified in paragraph (1). In such case, the issuance of the earnings withholding order and the date of its service on the employer shall be indicated on the writ, or separately and attached thereto, and a supplemental return on the earnings withholding order shall be made at the time provided in paragraph (1) in the same manner as the writ was returned.~~

(c) Nothing in subdivision (b) extends the time within which a levy may be made under the writ of execution pursuant to which the earnings withholding order was issued.

Comment. Former Section 723.026, which required the levying officer to receive and account for earnings, is superseded by new Section 723.026 which requires a receipt by the judgment creditor.

18/531

SEC. 5. Section 723.026 is added to the Code of Civil Procedure, to read:

723.026. Not less frequently than monthly, the judgment creditor shall send the judgment debtor a receipt for payments received from the employer. The receipt shall state the amount of the payments received, the maximum amount that may be withheld pursuant to the earnings withholding order, and the total amount received during the period the order has been in effect. No receipt is required for payments received pursuant to a withholding order for support.

Comment. The receipt required by Section 723.026 not only provides the judgment debtor with a record of payments made on the judgment but also enables the judgment debtor to determine whether the employer has paid the amount withheld from earnings to the judgment creditor.

32/815

SEC. 6. Section 723.027 of the Code of Civil Procedure is amended to read:

723.027. If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 723.022, the judgment creditor shall promptly ~~notify the levying officer who shall promptly terminate the order by serving a notice of termination~~ serve an acknowledgment of the satisfaction of judgment on the employer. Nothing in this section precludes the judgment debtor from serving a certified copy of the satisfaction of judgment on the employer.

Comment. Section 723.027 is amended to delete the duty imposed on the levying officer. The judgment creditor or judgment debtor serves the satisfaction of judgment on the employer, which terminates withholding. Section 723.022(a)(5).

405/002

SEC. 7. Section 723.030 of the Code of Civil Procedure is amended to read:

723.030. (a) A "withholding order for support" is an earnings withholding order ~~on a writ of execution~~ issued to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (2), (3), ~~or~~ (4) , or (5) of subdivision (a) of Section 723.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 723.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

Comment. Section 723.030 is amended to delete the reference to the writ of execution. A writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

405/003

SEC. 8. Section 723.031 of the Code of Civil Procedure is amended to read:

723.031. (a) Nothing in this chapter affects an order made pursuant to Section 4701 of the Civil Code.

(b) An order made pursuant to Section 4701 of the Civil Code shall be given priority over any earnings withholding order as provided in that section. An employer upon whom an order made pursuant to Section 4701 is served shall withhold and pay over the earnings of the employee pursuant to such order notwithstanding the requirements of any earnings withholding order. When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the ~~levying officer~~ judgment creditor who served the earnings

723.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior earnings withholding order except that a withholding order for support shall be given priority as provided in Section 723.030. When an employer is required to cease withholding earnings pursuant to an earlier earnings withholding order, the employer shall notify the ~~levying officer~~ judgment creditor who served the earlier earnings withholding order that a supervening withholding order for taxes is in effect.

(b) An employer shall not withhold earnings of an employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect, and, in such case, the subsequent withholding order for taxes is ineffective.

Comment. Section 723.077 is amended to delete the reference to the levying officer. The judgment creditor serves the earnings withholding order. Section 723.103.

405/398

SEC. 11. Section 723.079 is added to the Code of Civil Procedure, to read:

723.079. No receipt need be sent to the taxpayer for amounts paid over to the state pursuant to a withholding order for taxes unless the taxpayer has requested in writing that receipts for such amounts be sent.

Comment. Section 723.079 provides an exception to the requirement of Section 723.026.

405/188

SEC. 12. Section 723.080 of the Code of Civil Procedure is amended to read:

723.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by the state by first-class mail, postage prepaid, in the manner provided in Section 723.101 or by any authorized state employee. Service of a withholding order for taxes is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 723.101. ~~Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a~~

withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person on whom it is served or to whom it is to be provided.

Comment. Section 723.080 is amended in recognition of the general provisions for service by mail. See Section 723.101.

405/191

SEC. 13. Section 723.101 of the Code of Civil Procedure is amended to read:

723.101. (a) An earnings withholding order shall be served by the levying officer judgment creditor upon the employer by delivery service of the order to on any of the following persons :

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by first-class mail, postage prepaid, by personal delivery as provided in Section 415.10 or 415.20, or by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is completed at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5. Service of an earnings withholding order is complete when it is received by, or the return receipt is executed by or on behalf of, the employer or a person described in subdivision (a).

(c) Service of any other notice or document under this chapter may be made in the same manner as an earnings withholding order. If service is made on the employer after the employer's return has been received by the levying officer judgment creditor, the service shall be made by registered or certified mail, postage prepaid, with return receipt requested, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether

or not such address is in the county. Nothing in this subdivision precludes service by personal delivery on the person designated in the employer's return. Service of any other notice or document on the person on whom it is served is complete at the following times:

(1) If made by first-class mail, postage prepaid, when the notice or document is deposited in the mail addressed to the last known address of the person.

(2) If made by registered or certified mail, postage prepaid, with return receipt requested, when the return receipt is executed by or on behalf of the person.

(3) If made by personal delivery as provided in Section 415.10 or 415.20, when the notice or document is received by the person.

(d) Notwithstanding Section 1032.6, a judgment creditor is not entitled to the costs of service under this chapter.

Comment. Section 723.101 is amended to delete the references to the levying officer. The judgment creditor serves the earnings withholding order. Section 723.103. The employer's return is made to the judgment creditor. Section 723.104.

Section 723.101 is also amended to enable service under this chapter by first-class mail. The person on whom a notice or document is served is more likely to receive the notice or document, and to receive it more quickly if service is by first-class mail. First-class mail service has long been used by the state in enforcing tax liabilities by wage garnishment. Cf. Section 723.080 (first-class mail service authorized). First-class mail is also less expensive than other forms of service. In recognition of this fact and to encourage service by first-class mail, subdivision (d) is added to preclude recovery of collection costs for service of notices and documents. Nothing in Section 723.101 should be construed to preclude use of registered or certified mail or personal service at the judgment creditor's own expense, however.

404/148

SEC. 14. Section 723.102 of the Code of Civil Procedure is amended to read:

723.102. (a) if a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time for the return of the writ under subdivision (a) of Section 683 has not expired; a judgment creditor may apply for the issuance of an earnings withholding order by filing an application, in the form prescribed by the Judicial Council, with a levying officer in such county who the clerk of the court that entered the judgment pursuant to which the earnings withholding order is sought. The court clerk shall

promptly issue an earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.125.

(b) This section does not apply where the earnings withholding order is a withholding order for taxes.

Comment. Section 723.102 is amended to delete the reference to the levying officer. The judgment creditor serves the earnings withholding order. Section 723.103. The reference to an outstanding writ of execution is likewise deleted--issuance of such a writ, which gives the levying officer authority to act, is unnecessary because the levying officer is not involved in the service of the earnings withholding order.

404/149

SEC. 15. Section 723.103 of the Code of Civil Procedure is amended to read:

723.103. (a) The ~~levying officer~~ judgment creditor shall serve upon the designated employer all of the following:

- (1) The original and one copy of the earnings withholding order.
- (2) The form for the employer's return.
- (3) The notice to employee of earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.122.

(b) At the time the ~~levying officer~~ judgment creditor makes service pursuant to subdivision (a), the ~~levying officer~~ judgment creditor shall provide the employer with a copy of the employer's instructions referred to in Section 723.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (a) of Section 683 for the return of the writ of execution under which the order was issued has expired.

(c) An earnings withholding order served upon the employer more than 45 days after its date of issuance is ineffective.

Comment. Section 723.103 is amended to delete the references to the levying officer. The judgment creditor serves the earnings withholding order and transmits other required information. Because the levying officer is not involved in the service of the earnings withholding order, there is no writ of execution issued which gives the levying officer authority to act, and there is no corresponding return of the writ required. See Section 723.102. The time within which the earnings withholding order must be served is thus no longer tied in subdivision (c) to the time of return of the writ, but is set at a fixed 45 days after issuance of the withholding order.

SEC. 16. Section 723.104 of the Code of Civil Procedure is amended to read:

723.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee of earnings withholding order within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the ~~levying officer~~ and mail it by ~~first-class mail, postage prepaid,~~ to the ~~levying officer~~ judgment creditor and send it to the judgment creditor within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the ~~levying officer~~ judgment creditor with the employer's return.

Comment. Section 723.104 is amended to delete the references to the levying officer. The judgment creditor serves the employer's return on the employer. Section 723.103. The reference to mail is deleted in recognition of the general provision for service of notices and documents by mail. See Section 723.101.

SEC. 17. Section 723.105 of the Code of Civil Procedure is amended to read:

723.105. (a) A judgment debtor may claim an exemption under Section 723.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the ~~levying officer~~ court clerk an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon the filing of the claim of exemption, the levying officer court clerk shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption, in the form prescribed by the Judicial Council, stating that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer court clerk within 10 days after the date of the mailing of the notice of claim of exemption is sent.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of mailing of the notice of claim of exemption is sent, file with the levying officer court clerk a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer court clerk within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion the court clerk shall set the matter for hearing, which hearing shall be held not later than 20 days from the date the notice of motion opposition was filed unless continued for good cause. Not less than 10 days prior to the hearing, the judgment creditor court clerk shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and serve a notice of the time and place of the hearing on the judgment debtor and judgment creditor and serve a copy of the notice of opposition to the claim of exemption by first-class mail on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid,

addressed to the judgment debtor at the address stated in the claim of exemption and; if service on the attorney for the judgment debtor was requested in the claim of exemption; to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer court clerk does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption; the levying officer was served, the court clerk shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

(h) If the earning withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of

service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of such order but prior to the receipt of notice of its termination, the judgment debtor may recover such amounts only from the ~~levying officer~~ if the ~~levying officer still holds such amounts or, if such amounts have been paid over to the judgment creditor,~~ from the judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over such amounts to the ~~levying officer~~ judgment creditor, the employer shall promptly pay over such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

Comment. Section 723.105 is amended to delete the references to the levying officer. The court clerk handles exemption claims. The references to mailing are also deleted in recognition of the general provision for service of notices and documents by mail. Section 723.101.

404/297

SEC. 18. Section 723.121 of the Code of Civil Procedure is amended to read:

723.121. The "application for issuance of earnings withholding order" shall be executed under oath or by declaration under penalty of perjury and shall include all of the following:

(a) The name, the last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The court where the judgment was entered and the date the judgment was entered.

~~(d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.~~

~~(e) (d)~~ The amount sought to be collected, indicating the amount of the judgment, plus additional accrued items, less partial satisfactions, if any.

~~(f) (e)~~ The name and address of the employer to whom the order will be directed.

~~(g) (f)~~ The name and address of the person, if other than the judgment creditor, to whom the withheld money is to be paid by the levying officer employer.

Comment. Section 723.121 is amended to delete the reference to the levying officer. The employer pays withheld earnings to the judgment creditor. Section 723.025.

Former subdivision (d) is deleted because a writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

404/299

SEC. 19. Section 723.122 of the Code of Civil Procedure is amended to read:

723.122. The "notice to employee of earnings withholding order" shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 723.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order judgment creditor in payment of the judgment described in the order.

~~(b) The amounts required to be withheld pursuant to Section 723-050 on illustrative amounts of earnings.~~

~~(c) (b)~~ No amount can be withheld from the earnings of a judgment debtor which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor.

~~(d)~~ (c) If a judgment debtor wishes a court hearing to prove the amounts should not be withheld from the judgment debtor's earnings because they are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the ~~levying officer~~ court clerk an original and one copy of the "judgment debtor's claim of exemption" and an original and one copy of the "judgment debtor's financial statement." The notice shall also advise the judgment debtor that the claim of exemption form and the financial statement form may be obtained without charge at the office of ~~the levying officer~~ any clerk of a trial court .

~~(e)~~ (d) Under Section 300 of the Labor Code, the judgment debtor may revoke an assignment of wages or salary to be earned after the time of the revocation unless the assignment is made pursuant to Section 4701 of the Civil Code.

Comment. Section 723.122 is amended to delete the references to the levying officer. The employer pays withheld earnings to the judgment creditor. Section 723.025. A claim of exemption is filed with the court clerk. Section 723.105. Copies of forms are kept at the court clerk's office. Section 723.129.

Former subdivision (b) is also deleted because, as enacted, Section 723.050 does not provide a withholding scheme based on gross earnings for particular pay periods.

404/302

SEC. 20. Section 723.125 of the Code of Civil Procedure is amended to read:

723.125. The "earnings withholding order" shall include all of the following:

(a) The name, address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the ~~writ of execution to the county where the earnings withholding order is sought~~ the earnings withholding order .

(e) The total amount that may be withheld pursuant to the order (the amount of the judgment, plus additional accrued items, less partial satisfactions, if any).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 723.050 or the amount specified in the order, as the case may be, for the pay periods ending during such withholding period.

(g) An order to the employer to pay over to the ~~levying officer~~ judgment creditor or such other person as is named in the application for issuance of earnings withholding order at a specified address the amount required to be withheld and paid over pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the "employer's return" and return it by ~~first-class mail; postage prepaid;~~ to the ~~levying officer~~ judgment creditor at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "notice to employee of earnings withholding order" within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery.

~~(j) The name and address of the levying officer.~~

Comment. Section 723.125 is amended to delete the references to the levying officer. The employer pays over withheld earnings to the judgment creditor. The employer's return is made to the judgment creditor. Section 723.104.

Subdivision (d) is revised because a writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

The reference to mail is deleted from subdivision (h) in recognition of the general provision for service of notices and documents by mail. See Section 723.101.

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SEC. 21. Section 723.126 of the Code of Civil Procedure is amended to read:

723.126. (a) The "employer's return" shall be executed under oath or by declaration under penalty of perjury. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the ~~levying officer~~ judgment creditor to whom the form is to be returned.

(2) A direction that the form be mailed returned to the levying officer judgment creditor by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

(3) The name, the address, and, if known, the social security number of the judgment debtor.

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is now employed by the employer or whether the employer otherwise owes earnings to the employee.

~~(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.~~

~~(4) (3) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.~~

~~(5) (4) Whether the employer was required on the date of service to comply with an order made pursuant to Section 4701 of the Civil Code and, if so, the court which issued such order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.~~

~~(6) (5) The name and address of the person to whom notices to the employer are to be sent.~~

Comment. Section 723.126 is amended to delete the references to the levying officer. The employer's return is made to the judgment creditor. Section 723.104. The earnings withholding order is served by the judgment creditor. Section 723.103.

The reference to mail is deleted from paragraph (a)(2) in recognition of the general provision for service of notices and documents by mail. See Section 723.101.

Former paragraph (b)(3) is also deleted because, as enacted, Section 723.050 does not provide a withholding scheme based on gross earnings for particular pay periods.

SEC. 22. Section 723.127 of the Code of Civil Procedure is amended to read:

723.127. (a) The Judicial Council shall prepare "employer's instructions" for employers and revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings.

(b) Except to the extent that they are included in the forms required to be provided to the employer by the levying officer judgment creditor, the Judicial Council shall publish and provide to the levying officers court clerks copies of the employer's instructions.

Comment. Section 723.127 is amended to delete the references to the levying officer. The judgment creditor provides forms to the employer. Section 723.103. The earnings withholding order is issued by the court clerk. Section 723.102.

SEC. 23. Section 723.129 of the Code of Civil Procedure is amended to read:

723.129. The levying officer clerk of each trial court shall have copies of the forms for the "judgment debtor's claim of exemption" and "judgment debtor's financial statement" available at the levying officer's office for distribution without charge to a person who desires to make a claim of exemption under Section 723.051.

Comment. Section 723.129 is amended to delete the reference to the levying officer. The claim of exemption is filed with the court clerk. Section 723.105.

SEC. 24. Section 723.152 of the Code of Civil Procedure is amended to read:

723.152. If an employer withholds earnings pursuant to this chapter and, with the intent to defraud either the judgment creditor or the judgment debtor, fails to pay such withheld earnings over to the levying officer judgment creditor, the employer is guilty of a misdemeanor.

Comment. Section 723.152 is amended to delete the reference to the levying officer. The employer pays withheld earnings to the judgment creditor. Section 723.025.

SEC. 25. Section 723.155 is added to the Code of Civil Procedure, to read:

723.155. The fee for filing an application for an earnings withholding order under Section 723.102 is the same as the fee for issuing a writ of execution. No other filing fees may be charged under this chapter.

Comment. Section 723.155 reflects the fact that garnishment of earnings is made by an earnings withholding order rather than by writ of execution under this chapter. The fee for issuance of a writ of execution by the county clerk is four dollars. Govt. Code § 26828. The fee for issuance of a writ of execution by a justice court or a municipal court is one dollar and fifty cents. Govt. Code §§ 71665.6 (justice court) and 72065 (municipal court).

SEC. 26. Section 26750 of the Government Code is repealed.

~~26750. (a) The fee for serving an earnings withholding order under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure, including but not limited to the costs of postage or traveling, and for performing all other duties of the levying officer under that law with respect to such levy is eight dollars and fifty cents (\$8.50).~~

~~(b) No additional fees, costs, or expenses may be charged by the levying officer for performing the duties under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure.~~

Comment. Section 26750 is repealed because the levying officer has no duties under the Employees' Earnings Protection Law.

SEC. 27. Section 12 of Chapter 1133 of the Statutes of 1978 is amended to read:

12. This act shall become operative on July 1, 1979. The Judicial Council, the state agencies concerned with the implementation of Article 4 (commencing with Section 723.070) of Chapter 2.5, of Title 9, of Part 2 of the Code of Civil Procedure, and the court clerks and levying officers shall, prior to that date, take all measures necessary in order that the provisions of this act may be implemented on July 1, 1979.

Comment. Section 12 of Chapter 1133 of the Statutes of amended to delete the reference to levying officers. The levy officers have no duties under the Employees' Earnings Protection

Note. The Law Revision Commission intends to sponsor legis. at the 1979 legislative session to defer the operative date of the Employees' Earnings Protection Law to January 1, 1980.